

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELSEVIER INC., ELSEVIER B.V.,  
ELSEVIER LTD., and ELSEVIER MASSON  
SAS,

Plaintiffs,

v.

PIERRE GROSSMANN, IBIS CORP.,  
PUBLICAÇÕES TÉCNICAS  
INTERNACIONAIS, and JOHN DOE  
Nos. 1-50,

Defendants.

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12 Civ. 5121 (KPF)

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

Pending before the Court is a renewed motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50, filed by Plaintiffs Elsevier Inc., Elsevier B.V., Elsevier Ltd., and Elsevier Masson SAS (collectively, “Plaintiffs” or “Elsevier”) against Defendant Pierre Grossmann. On January 14, 2016, a jury determined that Defendant had violated the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968; however, the jury awarded only \$11,108 in damages, as opposed to the \$31,345 sought by Plaintiffs. Plaintiffs now ask the Court to enter judgment for the full amount of damages, trebled in accordance with Section 1964(e) of RICO, for a total of \$94,035, plus pre-judgment interest. In the alternative, Plaintiffs request a new trial under Federal Rule of Civil Procedure 59 solely as to the issue of damages. For the reasons set forth in the

remainder of this Opinion, the motion for judgment as a matter of law is denied, and the motion for a new trial is granted.

### **BACKGROUND<sup>1</sup>**

This Court’s prior decisions provide a thorough review of the relevant facts. *See Elsevier, Inc. v. Grossman*, No. 12 Civ. 5121 (KPF), 2013 WL 6331839, at \*1-3 (S.D.N.Y. Dec. 5, 2013) (“*Elsevier I*”) (granting Plaintiffs leave to amend the complaint); *Elsevier, Inc. v. Grossman*, 77 F. Supp. 3d 331, 337-41 (S.D.N.Y. 2015) (“*Elsevier II*”) (granting in part Defendants’ motion to dismiss); *Elsevier, Inc. v. Grossman*, 199 F. Supp. 3d 768, 773–78 (S.D.N.Y. 2016) (“*Elsevier III*”), *order corrected*, No. 12 Civ. 5121 (KPF), 2016 WL 7077037 (S.D.N.Y. Dec. 2, 2016); *Elsevier Inc. v. Pierre Grossmann, IBIS Corp.*, No. 12 Civ. 5121 (KPF), 2017 WL 5135992, at \*1-2 (S.D.N.Y. Nov. 2, 2017) (“*Elsevier IV*”) (granting Plaintiffs’ motion for summary judgment). As a result, the Court assumes the parties’ familiarity with the underlying facts and will discuss those facts only to the extent necessary to resolve the instant motions.

Plaintiffs — publishers of scholarly books and academic journals — brought this action to recover for sales of journals to Defendant that had been improperly made at discounted rates for individual, personal use. *See Elsevier III*, 199 F. Supp. 3d at 774-75. Plaintiffs charge two rates for its journals depending on whether the purchaser is an institution or an individual. *See id.*

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<sup>1</sup> In addition to the evidence provided by the parties at trial, this Opinion draws on facts contained in Plaintiffs’ brief in support of their motion for judgment as a matter of law on the issue of damages (“Pl. Br.” (Dkt. #186)), and Plaintiffs’ letter renewing that motion (“Pl. Letter” (Dkt. #420)).

Institutions pay full price, while individuals can purchase journals at a discounted rate. *See id.* Defendant and two companies under his control took advantage of this pricing structure and, after purchasing the journals at a discounted rate, resold them to institutions at the higher rate, pocketing the difference while violating Plaintiffs' terms and conditions of sale. *See id.*

#### **A. The Evidence at Trial**

The trial against Defendant Grossmann began on January 11, 2016. (Dkt. #196-203).<sup>2</sup> As relevant to the issue of damages, Plaintiffs introduced into evidence “a chart that identified each fraudulent subscription, and explained how [Plaintiffs] matched up the fraudulent order [at the discounted, individual rate] with the Defendant’s subsequent re-sale of that subscription to an institutional customer” at the higher price. (Pl. Letter 2). Plaintiffs were able to match some of the subscriptions by cross-referencing a 148-page spreadsheet that had been produced by Defendant during pre-trial discovery. (*Id.*). This spreadsheet included purchase order numbers and invoices from some of the subscriptions purchased by Defendant from Plaintiffs at the individual rate. (Pl. Br. 5). Unfortunately, Defendant did not “produce the vast majority of such records ... despite [Plaintiffs’] document requests.” (*Id.* at 3).

For those fraudulent subscriptions that could not be cross-referenced with defense documents due to Defendant’s pre-trial discovery deficiencies,

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<sup>2</sup> On June 29, 2012, Elsevier filed suit against Defendants Pierre Grossman, IBIS Corp., Publicações Técnicas Internacionais, and various “John Doe” Defendants. (Dkt. #1; *see also* Dkt. #33 (first amended complaint)). In June 2017, “Elsevier obtained default judgments against the corporate defendants, and Grossman, proceeding *pro se*, became the lone defendant to proceed to trial.” *Elsevier IV*, 2017 WL 5135992, at \*1.

Plaintiffs attempted to match each individual subscription to an end institutional user through a variety of other means. (Pl. Br. 5). In addition to identifying which individual rate subscription on Plaintiffs' chart corresponded with a subscription that was resold by Defendant at the higher institutional price, the chart also included "the amount of damages attributable to each subscription." (*Id.* at 2).

During the trial, Plaintiffs also presented testimony from multiple witnesses regarding Defendant's fraudulent subscription business. See *Elsevier III*, 199 F. Supp. 3d at 776. "Grossman testified on his own behalf, and claimed that Defendants were falsely accusing him of subscription fraud to run him out of business," but did not present any additional evidence to the jury. *Id.* After a four-day trial, the jury found Defendant liable under Section 1962(c) for conducting or participating in a RICO enterprise through a pattern of racketeering activity. (Dkt. #202). Instead of the full amount of \$31,345 sought by Plaintiffs, the jury awarded only \$11,108 in damages against Defendant. (*Id.*).

## **B. The Post-Trial Litigation**

On February 15 and 16, 2016, Plaintiffs filed a number of post-trial motions, including a motion for judgment as a matter of law pursuant to Rule 50 for the full amount of damages or, alternatively, for a new trial pursuant to Rule 59 on the issue of damages. (Pl. Br. 1-3). Before this Court had the opportunity to rule on Plaintiffs' motion, the Supreme Court decided *RJR Nabisco, Inc. v. European Cmty.*, — U.S. —, 136 S. Ct. 2090, 2106 (2016),

which held that a RICO plaintiff must plead and prove a domestic injury to its business or property to prevail. Because the Supreme Court's decision had issued before judgment in the instant case had been entered, this Court denied Plaintiffs' motion for judgment as a matter of law on the issue of damages, without reaching the merits of the motion. *See Elsevier III*, 199 F. Supp. 3d at 794. Instead, this Court held that due to the intervening change in the law, Plaintiffs — without having established domestic injury — had failed to establish RICO liability. *See id.*

Given the procedural history of the case, the Court granted Plaintiffs the opportunity to make a proffer of evidence establishing domestic injury and Plaintiffs moved for summary judgment on the issue. (Dkt. #384-87). On November 2, 2017, this Court granted Plaintiffs' motion, finding that Plaintiffs had successfully proved domestic injury for 48 of the 51 fraudulent subscriptions. *See Elsevier IV*, 2017 WL 5135992, at \*4. Having now established RICO liability, Plaintiffs filed a letter renewing the prior motion for judgment as a matter of law on the issue of RICO damages. (Pl. Letter).

## DISCUSSION

### A. Applicable Law

Two principles guide the Court's consideration of Plaintiffs' request for judgment as a matter of law: first, the standard Rule 50(b) imposes for granting such a motion; and second, the Court's ability to increase an award of damages under *Dimick v. Schiedt*, 293 U.S. 474 (1935).

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